



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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JUL 08 2019

Ref: 8WD-SDU

Honorable Vernon Hill
Chairman
The Eastern Shoshone Tribe
P.O. Box 538
Ft. Washakie, Wyoming 82514-0538

Re: U.S. Environmental Protection Agency Underground Injection Control Program
Invitation for Consultation on revised Draft Permits and related actions for the Dewey-Burdock
Uranium Recovery Site near Edgemont, South Dakota

Dear Chairman Hill:

The U.S. Environmental Protection Agency Region 8 Underground Injection Control (UIC) Program would like to consult with you, and any other representatives you would like to invite, on revised Draft Permits for injection wells and an updated draft Environmental Justice Analysis for the proposed Dewey-Burdock uranium in-situ recovery (ISR) site near Edgemont, South Dakota. The EPA anticipates issuing the revised Draft Permits in August 2019.

In March 2017, the EPA UIC Program issued two Draft Permits for Powertech (USA) Inc.: one for Class III injection wells used during the uranium recovery process; the second for deep injection wells for the disposal of treated ISR process waste water. The EPA also issued a draft Environmental Justice Analysis at that time. After considering comments received during the public comment period, the EPA has decided to issue revised Draft Permits, a revised draft Environmental Justice Analysis, a revised Aquifer Exemption Record of Decision and an updated document describing the EPA's plan for compliance with section 106 of the National Historic Preservation Act.

The location of the Dewey-Burdock site is shown in the enclosed Figure 1. For additional information about the proposed Dewey-Burdock site, please see the enclosed page entitled *Background Information on the Proposed Dewey-Burdock Uranium In-Situ Recovery Site* and enclosed Figures 1 through 5.

Environmental Justice Analysis

During consultation, we plan to present information about the revised draft Environmental Justice Analysis, specifically related to the The Eastern Shoshone Tribe's interest in the Black Hills as a sacred site. We also welcome any input the Tribe would be willing to offer to assist the EPA in presenting an accurate picture of environmental justice issues related to the Black Hills.

The EPA Tribal Consultation Policy

It is the EPA's policy to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. The EPA views consultation as a process of meaningful communication and coordination between the EPA and tribal officials prior to the EPA taking actions or implementing decisions that may affect tribes. For information about the EPA *Policy on Consultation and Coordination with Indian Tribes* please visit the following website: <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

The EPA also developed the *Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights* (Treaty Rights guidance) to complement the EPA's general *Policy on Consultation and Coordination with Indian Tribes*. The Treaty Rights guidance provides affirmative steps for the Agency to take during tribal consultations when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the resource, may be affected by the EPA's action. The Treaty Rights guidance was developed after nationwide tribal consultation. This guidance document is found at the following website: https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#treaty_rights.

Consistent with the Treaty Rights guidance, the EPA would also like input from the The Eastern Shoshone Tribe on treaty rights related to our revised draft permitting actions. The EPA acknowledges that some tribes have previously provided written public comment stating their position that treaty rights would be impacted by the Draft Permits. Nevertheless, pursuant to the Treaty Rights guidance, EPA seeks input on the following questions:

- (1) Do treaties exist within the project area?
- (2) What treaty rights exist in or what treaty-protected resources rely upon the project area? Among other things, have treaty-based groundwater rights in the project area been recognized by judicial decree or congressional settlement?
- (3) How are treaty rights potentially affected by the revised Draft Permits?
- (4) Any concerns you have related to treaty rights.

The EPA has a separate responsibility under section 106 of the National Historic Preservation Act (NHPA) to consult with tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking. Accordingly, we invite the The Eastern Shoshone Tribe to engage in government-to-government consultation under section 106. Wherever appropriate, the EPA attempts to integrate this section 106 consultation with general consultation under our Tribal Consultation Policy. Therefore, we propose the following potential topics for consultation:

- (1) Changes from the first Draft UIC permits to the second Draft UIC permits;
- (2) Any concerns you may have about the proposed Dewey-Burdock project and the UIC permitting actions; and
- (3) Potential historic properties, including those of traditional religious and cultural importance, within the Dewey-Burdock area of potential effect.

We understand that the The Eastern Shoshone Tribe may raise issues in consultation that should be kept confidential and nonpublic. During our consultation process, if there is information that you would like to provide, but that you believe should remain confidential, please specifically identify this information during our consultation meeting and we will explore options for keeping the information confidential in accordance with 36 CFR § 800.11(c). As we move forward with the consultation process, please be aware

that any information you provide to the EPA in writing will become a part of the public record unless other arrangements are made to maintain confidentiality.

We are requesting a reply from you as to whether the The Eastern Shoshone Tribe wishes to consult with the EPA. If you are interested in meeting with the EPA, please reply by August 2, 2019. Consultation requests should be submitted to Valois Robinson of my staff, who can be reached at (800) 227-8917, extension 312-6276 or (303) 312-6276; or by email at robinson.valois@epa.gov. Please include a point of contact for the Tribe so we can keep you informed as the EPA moves forward with this consultation process.

If we do not hear from you by August 2, 2019, we will interpret this to mean that you do not wish to consult with the EPA at this time. The EPA would also welcome the opportunity to consult after the revised Draft Permits are issued to discuss these important issues.

We appreciate the The Eastern Shoshone Tribe's prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Darcy O'Connor, Director
Water Division

Enclosures (6)

cc: Phoebe Wilson, Environmental Director
Joshua Mann, Tribal Historic Preservation Officer

Background Information on the Proposed Dewey-Burdock Uranium In-Situ Recovery Site

The Dewey-Burdock site is located north of Edgemont, South Dakota, in Fall River and Custer Counties as shown in the enclosed Figure 1. The EPA Region 8 UIC Program has received Class III and Class V injection well permit applications for this site from Powertech (USA) Inc. The Class III injection wells are related to uranium recovery; the Class V injection wells are deep wells for the disposal of treated process wastewater. The Class III permit application requests authorization for 14 injection well fields including approximately 2,330 wells to inject and recover fluids for the in-situ recovery of uranium. The Class V area permit application requests authorization for the injection of ISR process waste fluids (treated to meet radioactive and hazardous waste standards) into two proposed wells injecting into the Minnelusa Formation. The Class V area permit application requests authorization for up to four deep injection wells in case the two currently proposed wells do not have the capacity to dispose of the anticipated total volume of all ISR process waste fluids.

Powertech proposes using ponds to treat and store treated water that will be injected into the deep injection wells. The locations and configuration of the treatment ponds are shown in Figure 2. These ponds are not regulated under the UIC Program. Powertech will submit an application for review and approval of the pond construction design plan to the EPA Region 8 Air Program. The ponds will not allow infiltration into the subsurface. The ponds are not designed to be evaporation ponds, although some amount of evaporation will occur during storage of the treated water before it is injected into the deep injection wells. The evaporation process does not involve release of heavy metals, including uranium or other radioactive elements, into the air. The EPA has information about radiation at <http://www2.epa.gov/radiation>.

The total proposed project area consists of approximately 10,580 acres (4,282 ha) east and west of the Dewey Road (County Road 6463), including portions of Sections 1-5, 10-12, 14 and 15 in Township 7 South, Range 1 East and Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hills Meridian. The surface area that will actually be impacted by the uranium ore processing plants, the 14 proposed uranium in-situ recovery well fields, the two proposed deep injection wells, treatment and storage ponds, roads and other surface-disturbing facilities is less than the 10,580-acre project area. The enclosed Figure 1 is a map showing the project site location. Figure 3 is a map showing the locations of the proposed wellfields containing Class III injection wells and the site project boundary. Figure 4 shows the locations for the two proposed deep Class V injection wells. Figure 5 shows a stratigraphic cross section of geologic formations at the Dewey Burdock site and the proposed injection zones for both the Class III and Class V injection wells. The Powertech Dewey-Burdock Project Class III and Class V area permit applications, and other documents that are part of the permit administrative record, are available for public review on the EPA Region 8 UIC Program website at <https://www.epa.gov/uic/epa-dewey-burdock-class-iii-and-class-v-injection-well-draft-area-permits>.

Dewey Burdock Location Map

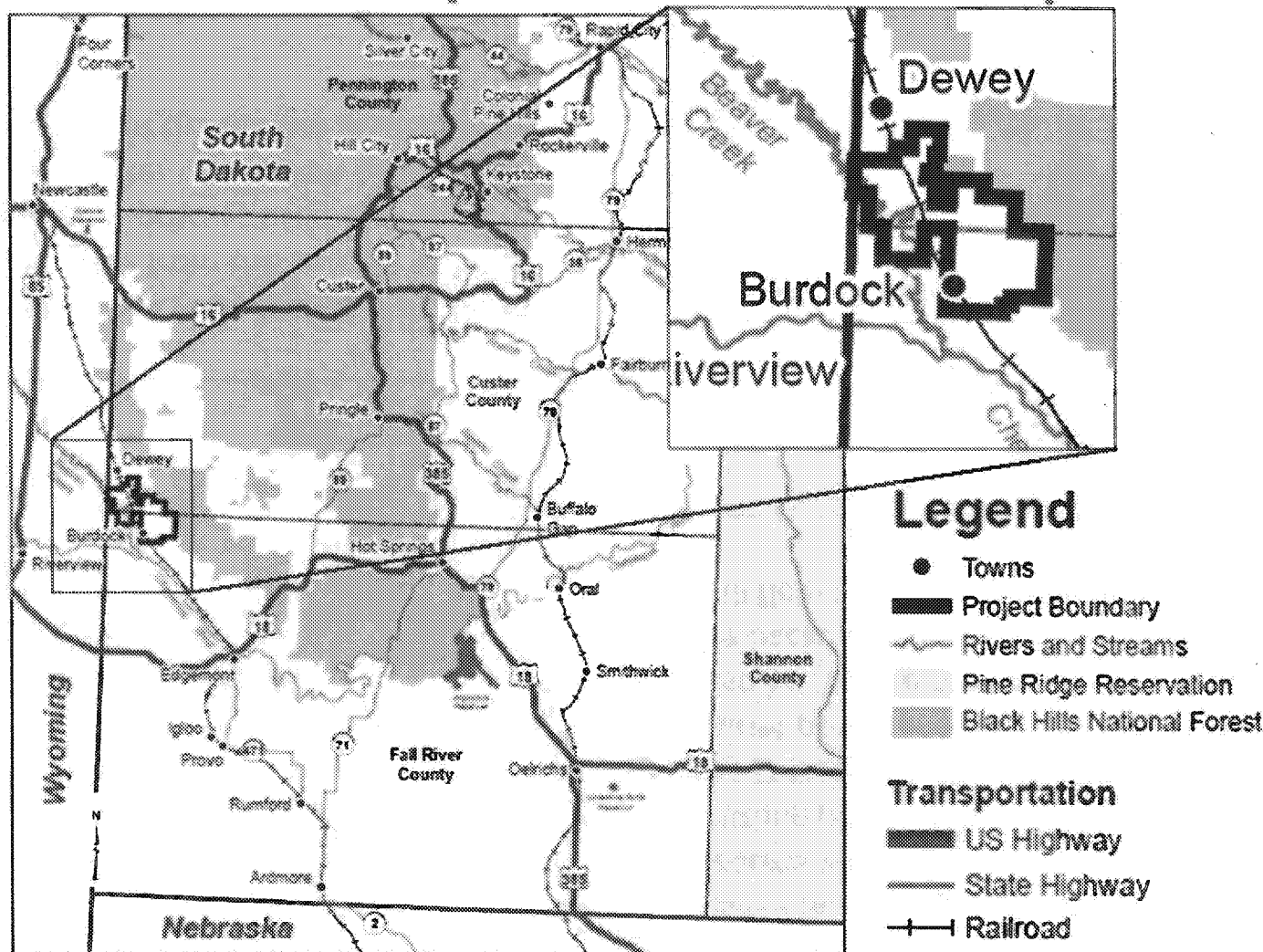
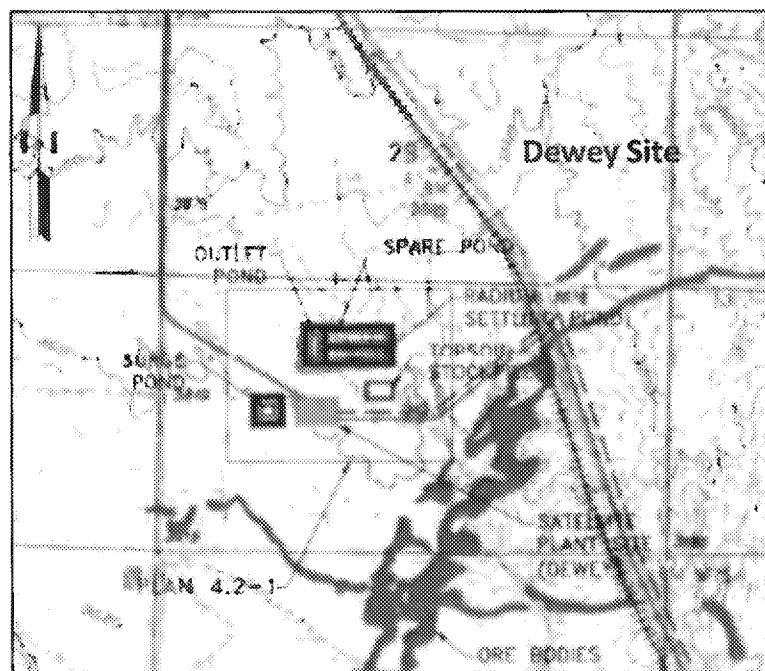


Figure 1. Map showing the location of the proposed Dewey-Burdock uranium recovery site.

Treatment and Storage Ponds for Deep Well Injectate



The Burdock Area central plant pond will store brine from the reverse osmosis treatment process used during groundwater restoration before the brine is treated in the radium settling ponds.

Waste fluids from the uranium recovery process will be treated in the radium settling ponds. After radium removal, the treated water will be stored in the outlet ponds and surge ponds. There will also be a spare radium treatment pond for backup. After treatment, the water will flow to the deep injection wells.

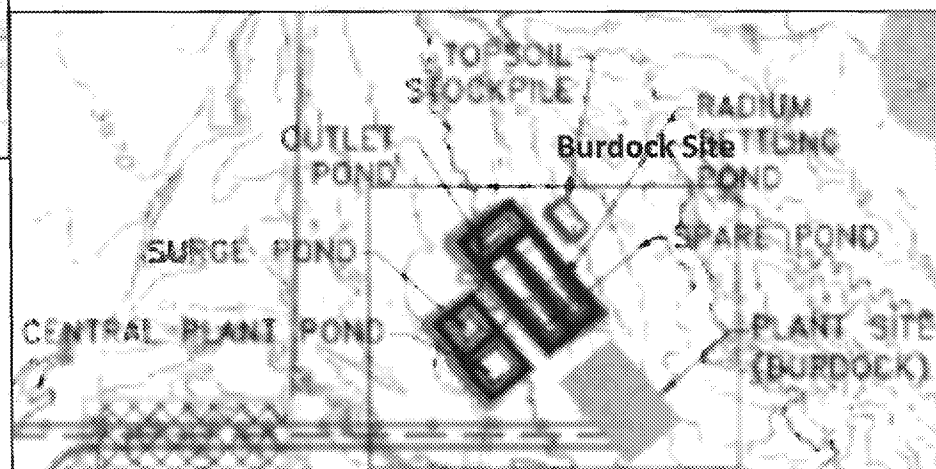


Figure 2. The Proposed Ponds for the Treatment and Storage of the Deep Injection Well Injectate.

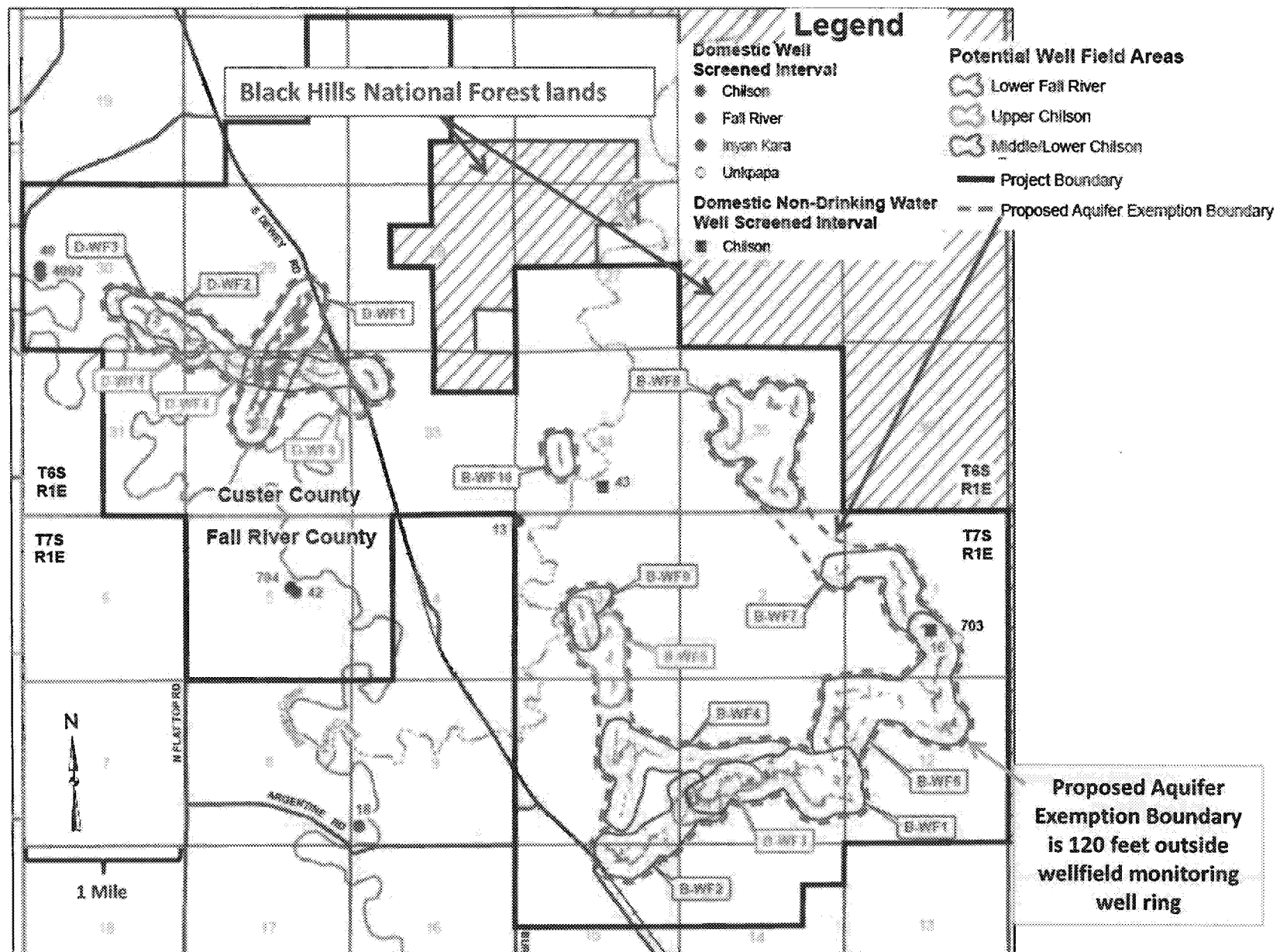


Figure 3. Map showing locations of the proposed wellfields containing Class III injection wells, the aquifer exemption boundary and the UIC permit boundary.

Figure 4. Map showing locations for the two currently proposed deep injection wells.
(Powertech may construct up to four deep injection wells.)

